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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1973/2010

Views adopted by the Committee at its 112th session (7-31 October 2014)

Submitted by:	Hew Raymond Griffiths (represented by counsels, Joanna Mansfield and Nicolas Patrick)
Alleged victims:	The author
State party:	Australia
Date of communication:	22 February 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 August 2010 (not issued in document form)
Date of adoption of views:	21 October 2014
Subject matter:	Detention pending extradition
Substantive issues:	Right to liberty and security; right to a fair trial; protection of aliens against arbitrary expulsion; right to an effective remedy
Procedural issues:	Exhaustion of domestic remedies; incompatibility *ratione materiae*
Articles of the Covenant:	2, paragraphs 2 and 3 (a); 9, paragraphs 1, 3 and 4; 13; and 14, paragraph 1
Articles of the Optional Protocol:	2; 3; and 5, paragraph 2 (b)

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (112th session)

concerning

Communication No. 1973/2010*

Submitted by:	Hew Raymond Griffiths (represented by counsels, Joanna Mansfield and Nicolas Patrick)
Alleged victims:	The author
State party:	Australia
Date of communications:	22 February 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 2014,

Having concluded its consideration of communication No. 1973/2010, submitted to the Human Rights Committee by Hew Raymond Griffiths under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Hew Raymond Griffiths, a British citizen born in 1962, who has been permanently residing in Australia since the age of seven. He claims to be a victim of a violation, by Australia, of his rights under articles 2, 9, 13 and 14 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 25 December 1991. The author is represented by Joanna Mansfield and Nicolas Patrick.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kaelin, Victor Manuel Rodriguez-Rescia, Fabian Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlatescu. Pursuant to rule 90 of the Committee's rules of procedure, Committee members Sir Nigel Rodley and Gerald L. Neuman did not take part in the examination of the communication.
Individual opinions by Committee members Victor Manuel Rodriguez-Rescia, Fabian Omar Salvioli, Dheerujlall B. Seetulsingh (concurring) and Yuval Shany (concurring) are appended to the present views.

The facts as submitted by the author

2.1 The author is a British citizen who has been permanently residing in Australia since the age of seven. In Australia, he was involved in an Internet group that made copies of software and computer games available to download by its members. The group was not motivated by profit and made no financial gain by their activities.

2.2 In 2000, the Customs Service of the Unites States of America started an investigation into Internet software piracy groups. On 11 December 2001, the Australian Federal Police seized the author's computer in connection with possible copyright infringement. On 12 March 2003, the United States District Court for the Eastern District of Virginia, United States of America, indicted him with criminal copyright infringement and conspiracy to violate copyright laws. The Court argued that the relevant acts entailing the breach of copyright occurred in the Eastern District of Virginia, because this is where the material was downloaded by end users. On the same date, the Court issued an arrest warrant against the author in connection with the charges.

2.3 On 19 June 2003, the Unites States authorities requested the author's extradition from Australia. On 28 July 2003, the Australian Minister for Justice and Customs issued a notice of receipt and extradition request, under section 16 (1) of the Extradition Act No. 4 of 1988. On 20 August 2003, a provisional arrest warrant was issued by the Australian authorities, under section 12 (1) of the Act. On 22 August 2003, the author was arrested on that basis and placed in custody at the Gosford Police Station. On 25 August 2003, he appeared before the Wyong Local Court, but the matter was adjourned to the Central Local Court on 27 August 2003, to discuss a bail application. He was subsequently transferred to the Metropolitan Remand and Reception Centre at the Silverwater Correctional Complex. On 15 October 2003, the Central Local Court granted him bail and released him conditionally.

2.4 On 25 March 2004, the author successfully challenged the Unites States extradition application before the Australian Local Court of New South Wales. The Court found that the author did not satisfy the "double criminality" requirement under section 19 (2) (c) of the Extradition Act, according to which a person is eligible for extradition if "the conduct constituting the office" in the requesting country would have constituted an extradition offence "in the part of Australia where the proceedings are being conducted". In that connection, the Court stated that the conduct constituting the offences in the Unites States would not have constituted offences under the law of New South Wales, Australia, where the author resided and the proceedings were conducted. It further found that the physical acts committed by the author had occurred in New South Wales and not in the Unites States. It also found it unusual to request extradition when the author had never been to the Unites States. Finally, it found that the offences of copyright infringement and conspiracy were not the usual kind of extradition offences. The Court determined, therefore, that the author was not eligible for extradition.

2.5 The Unites States authorities submitted an appeal to the Federal Court of Australia. On 7 July 2004, the Court reversed the decision of 25 March 2004 and found that the acts constituting the offences had been carried within Unites States jurisdiction; that the double criminality requirement had been met; and that the author was eligible for extradition. At the same date, the Court ordered the author's arrest. On 10 July 2004, he was placed in custody at the Metropolitan Remand and Reception Centre, pending extradition. On the same date, his bail application was denied.

2.6 The author appealed the decision of 7 July 2004 to the Full Court of the Federal Court of Australia. On 10 March 2005, the Court confirmed the decision of 7 July 2004 and ruled that the offence of conspiracy was a continuing offence that had occurred in the Unites States, notwithstanding the author's physical presence in Australia.

2.7 On 2 September 2005, the author applied for special leave to appeal before the High Court of Australia, which rejected his application on 2 September 2005, on the basis that the arguments he advanced had insufficient prospects of success.

2.8 On 6 September 2005, the Australian Attorney General invited the author to submit written submissions to the Minister for Justice and Customs as to why he should not be extradited. On 22 December 2006, the Minister made a final determination, under section 22 of the Extradition Act, that the author should be extradited to the Unites States and issued a warrant for the extradition. On 9 February 2007, the author made an ultimate application to the Federal Court of Australia, seeking the review of the Minister's decision of 22 December 2006, which was rejected at the same date.

2.9 On 17 February 2007, the author was extradited to the Unites States from Australia and remanded in detention.

2.10 On 20 February 2007, the District Court in Alexandria, Virginia, charged him with the copyright offenses. On 23 February 2007, his application for release on bail was denied.

2.11 On 20 April 2007, the author entered a guilty plea to one count of conspiracy to commit criminal copyright infringement, whereas the remaining count of copyright infringement was dismissed. On 22 June 2007, the District Court in Alexandria, found him guilty of conspiracy to commit copyright infringement and sentenced him to 51 months imprisonment. The Court took into consideration the time already served in custody in Australia, and ordered that he serve a total of 15 months in custody in the United States.

2.12 On 26 January 2008, the author was released. On 2 March 2008, he returned to Australia.

2.13 The author claims that he has exhausted all effective remedies available to him.

The complaint

3.1 The author contends that his detention pending extradition was arbitrary and in violation of article 9, paragraph 1, of the Covenant, owing to its excessive length exceeding 2.5 years and its unjustified and disproportionate character.[1] He stresses that he has no past criminal record and is a low flight risk and that the authorities did not take into account the severity of the crime he is accused of and his particular circumstances, such as his depression and lengthy incarceration. As the Extradition Act specifies no maximum permissible time for detention pending extradition, persons subject to extradition can be detained for indefinite periods. There is no protection from unduly lengthy, disproportionate and thus arbitrary detention.

3.2 The author also claims a violation of article 9, paragraph 3, of the Covenant, on account of the excessive length of his detention. He explains that his prolonged detention after 10 July 2004 was due to two reasons: the exercise of his right of appeal in relation to the decision to place him in custody for the second time, on 10 July 2004; and the time taken by the Minister to issue the extradition warrant, on 22 December 2006. He claims that over 15 months elapsed between 6 September 2005, when he was invited to provide arguments against his extradition to the Minister, and 22 December 2006, when the

[1] See general comment No.°8 (1982) on the right to liberty and security of persons. See also communication Nos. 1050/2002, *D. and E., and their two children* v. *Australia*, views adopted on 11 July 2006; 1069/2002, *Bakhtiyari* v. *Australia*, views adopted on 29 October 2003; 305/1988, *Van Alpen* v. *The Netherlands*, views adopted on 23 July 1989; 560/1993, *A.* v. *Australia*, views adopted on 3 April 1997; 631/1995, *Spakmo* v. *Norway*, views adopted on 28 November 1999; and 1442/2005, *Kwok* v. *Australia*, views adopted on 23 October 2009.

Minister made his final determination. He further argues that there has been no guarantee that the period of his detention in Australia will be taken into account by the Unites States authorities if he is convicted.

3.3 The author further alleges a violation of article 9, paragraph 4, together with article 2, paragraph 3, of the Covenant. He contends that he has had no opportunity to challenge his detention,[2] as section 15 (6) of the Extradition Act creates a presumption against bail and provides for very limited grounds for which it may be granted.[3] According to the case law of the Australian High Court, such special circumstances defer "from the circumstances that persons facing extradition would ordinarily endure when regard is had to the nature and extent of the extradition charges"; neither the length of proceedings nor the fact that the person has not fled the requesting country constitutes such special circumstances.[4] In addition, as the High Court stated, "in extradition cases, the general rule is that defendants are to be held in custody whether or not their detention is necessary".[5] The author adds that, once a bail application has been refused, section 15 (3) of the Extradition Act prevents a person from making another bail application without evidence of a change of circumstances that might justify granting bail. He submits that he, therefore, had no opportunity of review of the appropriateness and proportionality of his detention, in particular on account of its length, his subsequent depression and no flight risk.

3.4 With reference to articles 13 and 14 of the Covenant, the author submits that he was not afforded procedural fairness in the extradition proceedings, in particular in the light of the custodial sentence he was facing in the Unites States. He explains that a penalty for a similar offence in Australia consisted of a fine and up to five years' imprisonment, whereas in the United States it was punishable by up to 10 years' imprisonment. Therefore, if he had been charged, tried and convicted in Australia, it is unlikely that he would have received a custodial sentence at all. This notwithstanding, he did not have an opportunity to challenge or respond to the evidence against him,[6] both regarding his extradition or the charges. He explains that, under section 19 (5) of the Extradition Act, the person subject to extradition "is not entitled to adduce, and the magistrate is not entitled to receive, any evidence to contradict the allegation that the person has committed an offence. The issue of a provisional warrant is done by the magistrate without the person to whom the proceedings relate being represented or heard".[7] He submits that judicial review, as set out by law, is therefore very limited and unsubstantial in extradition proceedings, which violated his guarantees of procedural fairness. He only had an opportunity to lead evidence following his extradition to the Unites States.

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[2] See communication No. 900/1999, *C.* v. *Australia*, views adopted on 28 October 2002, para. 8.3.

[3] Section 15 (6) of the Extradition Act reads: "A magistrate shall not remand a person on bail under this section unless there are special circumstances justifying such remand". As per the Explanatory Memorandum to the Bill: "a person shall not be granted bail unless there are special circumstances. Such a provision is considered necessary because experience has shown that there is a very high risk of persons sought for extraditable offices absconding. In many cases, the person is in Australia to avoid arrest in the country where he is alleged to have committed the offence, i.e. the person left the jurisdiction to avoid justice".

[4] See *United Mexican States* v. *Cabal* (2001) CLR 165, 191 [61], 193-194 [67].

[5] Ibid, 195 [72].

[6] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. See also communication Nos. 1015/2001, *Perterer* v. *Austria*, views adopted on 20July 2004; 961/2000, *Everett* v. *Spain*, decision adopted on 9 July 2004; and 470/1991, *Kindler* v. *Canada*, views adopted on 30 July 1993.

[7] See *Vasiljkovic* v. *Australia* (2006) 227 CLR 614, 658 [146]. See also communication No.°779/1997, *Äärelä and Näkkäläjärvi* v. *Finland*, views adopted on 24 October 2001.

3.5 Further under articles 13 and 14, the author submits that he felt pressured into entering the guilty plea in the Unites States, by reason that his lengthy time in detention might not count if he was unsuccessful at trial. Furthermore, the time spent in detention had an adverse impact on his health and ability to contest the allegations. If he had been granted procedural fairness by the opportunity to lead evidence in Australia, he may not have felt pressured to make the guilty plea.

3.6 The author submits that, in violation of article 2, paragraph 2, of the Covenant, the State party failed to adopt legislative or other measures to give effect to the protection from arbitrary detention in extradition cases, as guaranteed under its article 9, and, in violation of its article 2, paragraph 3 (a), failed to ensure the availability of an effective remedy in his case. He also claims, under article 2 of the Covenant, that the State party has removed the possibility of judicial remedy for his rights under its articles 13 and 14 by limiting the power of judicial discretion in extradition matters.

3.7 Without referring to any Covenant provision, the author alleges that he faced forced separation from his family and suffered psychological trauma as a result of anxiety in prison.[8]

State party's observations on admissibility and merits

4.1 On 29 June 2012, the State party submitted its observations on the admissibility and the merits of the communication. With reference to article 9, paragraph 1, of the Covenant, the author has not exhausted all available domestic remedies as he could have made a bail application to the Full Federal Court when he appealed the decision of 7 July 2004. Section 15 (3) of the Extradition Act applies specifically to the period during which the magistrate initially considers the issue of eligibility for surrender. Section 21 of the Act allows for appeals from the initial decision of the magistrate in respect of eligibility for surrender and grants appellate courts the power to make orders for the release of a person on bail. Section 21, paragraph 6 (f) (iv), provides that the court to which the appeal is made may order release on bail, if it considers that there are special circumstances justifying such an order. According to the Australian High Court, the person seeking bail has to establish that "special circumstances exist"; the matters relied on need to be "extraordinary and not factors applicable to all persons facing extradition". Regarding the author's explanation, based on legal advice, that there were no grounds of appeal, the State party refers to the case law of the Committee that "mere doubts about the effectiveness of domestic remedies do not absolve an author of the requirement to exhaust them".[9]

4.2 Should the Committee consider the allegations under article 9, paragraph 1, of the Covenant admissible, the State party submits that they are without merit. The author's detention pending extradition was at no stage arbitrary but rather reasonable and necessary in the circumstances and not inappropriate, unjustifiable or unpredictable. Furthermore, it was in accordance with the law, particularly the Extradition Act, and was necessary to achieve the purposes of Australia's extradition legislative and policy framework and give effect to its obligations under international law. There is no indication in the Committee's

[8] In relation to the alleged violations, contained in paras. 3.1 to 3.7 above, the author seeks compensation and amendments to the Extradition Act, particularly with a view to enabling the Judiciary to exercise substantive review and consider the overall appropriateness of an extradition request on a case-by-case basis; to enabling a person to challenge the evidence presented by the requesting state in an extradition request; and to setting appropriate time limits of each stage of determining whether a person is eligible for extradition and will be surrendered to an extradition country. He also requests that adequate remedies be available and that the Covenant be fully incorporated into Australian law.

[9] See communication No. 603/1994, *Badu* v. *Canada*, decision adopted on 18 July 1997, para. 6.2.

jurisprudence that detention for a particular length of time could be considered arbitrary per se. Furthermore, detention for the purpose of extradition cannot be considered arbitrary in the sense of article 9, paragraph 1, of the Covenant.[10] Extradition is a permissible ground for detention under article 5, paragraph 1 (f), of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.3 The State party distinguishes three periods of the author's detention: 22 August to 20 October 2003, the initial detention and release on bail; 10 July 2004 to 6 September 2005, while he pursued avenues for appeal against the finding that he was eligible for surrender; and 6 September 2005 to 22 December 2006, leading to the final determination by the Minister of Justice and Customs. All three periods were in compliance with domestic law.

4.4 With regard to the first period, the author was detained under section 15 of the Extradition Act. He made a bail application, which was granted on 15 October 2003. He was released on 20 October 2003, when he proved that he did not have passports to hand over as required by the bail conditions. On 25 March 2004, the Local Court found that he was not eligible for surrender. On 7 July 2004, the Federal Court overturned that decision. With regard to the second period, the author was placed in detention on 10 July 2004, under an order of the Full Federal Court. On 22 July 2004, he lodged an appeal to the Full Federal Court against the decision of 7 July 2004. However, he did not simultaneously seek an order for release on bail. The Full Federal Court confirmed, by its decision of 10 March 2005, that he was eligible for surrender. On 2 September 2005, the High Court dismissed the author's application for special leave to appeal. With regard to the third period, on 6 September 2005, the Attorney General informed the author that the matter had returned to the Minister of Justice and Customs for final determination under section 22 of the Extradition Act and invited him to make submissions. From then until 22 December 2006, when the Minister made a final determination to extradite the author, the Attorney's General made and considered responses to inquiries, including with overseas agencies, which were necessary to ensure that the Minister properly exercised his discretion under section 22 of the Extradition Act. Most of these inquiries were made in response to submissions by the author's representatives. In the light of these inquiries, the Minister made a final determination "as soon as is reasonably practicable", in terms of section 22 of the Extradition Act.

4.5 Concerning the author's submission regarding the absence of an effective guarantee that the time in detention in Australia would be taken into account by the Unites States authorities, the Australian authorities liaised with Unites States authorities, who advised that the author's assertion was not correct and referred to the United States Code, paragraph 18-3585 (b). Furthermore, the author's sentence by the Virginia District Court took into account the entire period during which had been detained in Australia; of his 51-month sentence, he therefore served 15 months in the Unites States. In any event, no violation of article 9, paragraph 1, arises in relation to a lack of guarantee that time spent in detention pending extradition will count towards a possible prison term in a foreign jurisdiction.

4.6 The State party further refutes as unsubstantiated the author's allegations under article 9, paragraph 4, of the Covenant. It submits that opportunity of review of the legality of the detention at domestic law was available to the author. Review of the lawfulness of

[10] See Manfred Novak, *CCPR Commentary* (1993), p. 225: "the categories of detention explicitly mentioned in Art. 5 (1) European Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 7 American Convention on Human Rights will not be considered as arbitrary in the sense of Art. 9 (1) CCPR".

detention by a court, pending the outcome of extradition processes, is available in three forms: a bail application under the Extradition Act; pursuant to the courts' general powers of judicial review, in the event of a magistrate's refusal to grant bail based on legal error; and by way of a *habeas corpus* application. Regarding the author's allegation that there is no ability for a detainee to obtain a review of detention that has become arbitrary by reason of its disproportionate length, the State party submits that such a review is available through a bail application. It concedes, however, that a court can order a release under special circumstances. According to the Australian High Court, the person seeking bail has to establish that "special circumstances exist"; the matters relied upon need to be "extraordinary and not factors applicable to all persons facing extradition"; "detention for a lengthy period [...] is not so special that it constitutes special circumstances". It acknowledges that this is a relatively high threshold for an individual seeking bail to meet. However, it finds it necessary to impose such a requirement to facilitate effective international cooperation in extradition matters, by ensuring that a person sought for extradition is not able to flee, and finds this requirement reasonable, appropriate and proportionate.

4.7 Article 9, paragraph 4, of the Covenant does not require that the merits of detention be open to review. To the extent that the Committee considers that the provision requires a merits review, this would not necessarily require a court to be able to order a release on the basis of the duration of detention alone. The determining factor is whether the grounds for detention are justifiable. To the extent that the author could establish special circumstances applicable to him, the merits of his detention were subject to review, which is sufficient to satisfy the Committee's interpretation of article 9, paragraph 4, of the Covenant.

4.8 Regarding the author's allegation of the lack of procedural fairness of the extradition proceedings, under articles 13 and 14 of the Covenant, the State party submits that article 14, paragraph 1, is inapplicable to such proceedings.[11] Therefore, to the extent that he complains under article 14, paragraph 1, his complaint is inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

4.9 Regarding the complaint under article 13 of the Covenant, the State party submits that the author's extradition was made "in accordance with the domestic law", within the meaning of the Covenant. The process for extradition under the Extradition Act contemplates four stages: (a) commencement, by the issue of a provisional warrant under section 12 (1) or of a notice under section 16 (1); (b) remand, under section 15, to be decided by a magistrate after the person's arrest, which lasts as long as may be necessary for eligibility proceedings to be taken under section 16 (1); (c) determination by a magistrate of eligibility for surrender, under section 19, while the person is on remand; and (d) executive determination, by the Attorney General under section 22, that the person is to be surrendered. The author's extradition complied with the requirements under the Extradition Act. He was extradited to the Unites States only after he was found eligible for surrender by the Australian courts and once a final determination had been made by the Minister under section 22 of the Extradition Act. Furthermore, no bad faith or abuse of power has tainted the decision-making under Australia's domestic law.

4.10 Moreover, the author was afforded procedural guarantees throughout the extradition process and, in particular, was "allowed to submit the reasons against his expulsion" and had "his case reviewed" by competent authorities, as required under article 13 of the Covenant. Thus, he contested his eligibility for surrender under article 19 of the Extradition Act, which requires that the magistrate be satisfied of the following matters before

[11] See communication No. 1341/2005, *Zundel* v. *Canada*, views adopted on 20 March 2007, para. 6.8. See also general comment No. 32 (note 6 above), para. 17.

determining that a person is eligible for surrender: that the required supporting documents have been produced; that the conduct constituting the offence in the extradition country would, if it had occurred in Australia, also have constituted an offence under Australian law, subject to penalty of not less than 12 months imprisonment; and that there are no substantial grounds for believing that there is an extradition objection in relation to the offence. The original hearing before the magistrate satisfied the requirement that the author had the opportunity to "submit reasons against his expulsion" and "have his case reviewed" by competent authorities.

4.11 Once the eligibility for surrender was determined by the courts, the matter was returned to the Minister for final determination under section 22 of the Extradition Act. On 6 September 2005, the Attorney General invited the author "to bring to the Minister's attention any information that may be pertinent to his decision whether to surrender [him] to the Unites States". The author and his representatives provided information in repose and the Minister took it into account in making his final determination. This process further satisfied the requirement that the author had the opportunity to "submit reasons against his expulsion" and "have his case reviewed" by the competent authorities.

4.12 Although article 13 of the Covenant does not require that a decision of a competent authority be subject to judicial review, such a review was available to the author in respect of the Minister's final determination. On 9 February 2007, he appealed the Minister's decision of 22 December 2006 to the Federal Court, on the basis that there had been an error of law. His appeal was denied on the same date, owing to the author's failure to establish a prima facie case that the Minister had exercised his discretion unreasonably.

4.13 To the extent that article 14 requirements of impartiality, fairness and equality of arms apply to the extradition proceedings under article 13 of the Covenant,[12] such requirements have also been met. Regarding the author's claim that he was precluded from submitting and responding to evidence that could have exculpated him from the allegations in the Unites States, the State party submits that article 14, paragraph 1, does not impose such an obligation. Rather, it requires that, in proceedings before a court or a tribunal, a party should be able to lead and respond to evidence relevant to the determination of the issues before the court, that is, the author's eligibility for surrender under article 19 of the Extradition Act, in the present case. The author was afforded an opportunity to lead and respond to evidence in this regard. The question as to whether he was guilty under the Unites States law and the type of sentence he would be likely to receive were irrelevant to the determination under article 19 of the Extradition Act. Furthermore, the author used the opportunity of review of the final determination by the Minister under section 22 of the Extradition Act. He was entitled to lead and respond to evidence in these proceedings insofar as they were relevant to the question of whether the Minister had made an error of law in making his decision.

4.14 Given that the complaints under articles 9, 13 and 14 of the Covenant are inadmissible and that article 2 of the Covenant can only be invoked jointly with other Covenant provisions,[13] the author's claim under article 2 is inadmissible. Should the Committee consider admissible the complaints under articles 9, 13 and 14 of the Covenant, the State party submits that there has been no breach under these provisions and the complaint under article 2 is, therefore, without merit.

[12] See general comment No. 32 (note 6 above), para. 62. See also *Everett* v. *Spain* (note 6 above), para. 6.4.

[13] See communication No. 1367/2005, *Anderson* v. *Australia*, views adopted on 31 October 2006, para. 7.6.

4.15 The State party submits that it has in place effective remedies in relation to potential breaches of the Covenant in detention and extradition proceedings, including the Extradition Act.

4.16 It concludes that the author's claims under articles 2, 9, paragraph 1, and 14, paragraph 1, of the Covenant are inadmissible. Additionally or alternatively, the claims under articles 2; 9, paragraphs 1 and 4; and 14, paragraph 1, of the Covenant are unmeritorious and should be dismissed as such.

Author's comments on the State party's observations

5.1 On 16 April 2014, the author commented on the State party's observations, insofar as, in its submissions, the State party suggested that there had been a lack of clarity in his communication. He explains that he maintains all his initial claims.

5.2 The author challenges the State party's non-exhaustion argumentation regarding his failure to make a bail application to the Full Federal Court when he appealed the Federal Court's decision of 7 July 2004, according to which that he was eligible for extradition. He explains that he unsuccessfully applied for bail after being placed in custody on 10 July 2004, further to the Federal Court's decision.[14] He did not reapply for bail before extradition. Extensively referring to jurisprudence of Australian courts, he argues that any application for bail at the point of appeal would have failed unless he could have demonstrated "special circumstances", an absence of flight risk and strong prospects of success on appeal. The only matters he could have conceivably put forward as "special circumstances" were his good character, his relationship with his father, the fact that he was no danger to the community and compliance with previous bail conditions, which, in the light of jurisprudence of Australian courts, do not constitute "special circumstances". Furthermore, there was no "change in his circumstances" between the time he appealed the decision of 7 July 2004 to the Federal Court and the refusal of his bail application on 10 July 2004. It was therefore extremely unlikely that he would have been able to demonstrate "special circumstances" in any application for bail at the point of his appeal to the Full Federal Court. It was also unlikely that he would have been able to establish "strong prospects of success" of such an appeal, particularly owing to the clear reasons given by the Federal Court and the unanimity of the Full Court on appeal. Accordingly, any bail application at that point was bound to fail as he would certainly have been unable to establish two out of three criteria required for a grant of bail.

5.3 The author's situation differs from the case of *Badu* v. *Canada*.[15] Not only did the author in *Badu* fail to demonstrate more than "mere doubts" as to the effectiveness of any domestic remedy, but he had a number of domestic remedies available to him, including a capacity to make arguments similar to the arguments made in his communication to the Committee. In the present case, the author had only one possible domestic remedy, which was ineffective for the above-mentioned reasons and did not allow him to advance arguments similar to his arguments on the merits in his communication to the Committee.

5.4 The author claims, therefore, that he has exhausted all available domestic remedies and that a bail application at the time of his appeal of the Federal Court decision of 7 July 2004 was an ineffective remedy that he was not required to avail himself of. If the Committee accepts the State party non-exhaustion argument, this does not affect the admissibility of his communication in relation to the events from 10 March 2005 onwards, when his appeal to the Full Federal Court was dismissed. The prospects of a grant of bail

[14] No further details are provided, particularly regarding the date of submission of the bail application or the date of its denial and the authority.

[15] See *Badu* v. *Canada* (note 9 above), paras. 4.6-4.10.

decrease with every unsuccessful application for review or appeal.[16] It is therefore inevitable that he would have been refused bail after his unsuccessful appeal to the Full Federal Court. Even if the Committee accepts there was an effective domestic remedy available to him when he lodged his appeal, that remedy was unavailable and/or ineffective from the date his appeal was dismissed.

5.5 The author challenges the State party's argument that his detention pending extradition was not arbitrary, within the meaning of article 9, paragraph 1, only because it was in accordance with the law and, therefore, justified. The fact that extradition can be a reason for a person's detention under the Covenant does not mean that detention pending extradition is automatically justified and proportionate and, accordingly, not arbitrary. For instance, detention can only be justified on the basis of a risk of absconding or non-cooperation if there are strong grounds to believe such a risk is likely in a particular case.[17] The requirement in the Extradition Act that "special circumstances" exist before bail can be granted reverses this test. Under the case law of the European Court of Human Rights, detention under article 5, paragraph 1 (f), of the European Convention for the Protection of Human Rights and Fundamental Freedoms ceases to be permissible if extradition proceedings are not prosecuted with due diligence; to avoid being branded as arbitrary, inter alia, the length of the detention should not exceed that reasonably required for the purpose pursued.[18]

5.6 There is no guidance in section 22 of the Extradition Act as to the time during which a defendant in extradition proceedings might be detained. That section provides that the Attorney-General is required to make an extradition determination "as soon as is reasonably practicable, having regard to the circumstances, after a person becomes an eligible person". There has been little judicial consideration of this phrase. According to the most recent consideration, a failure by the Attorney-General to make an extradition determination "as soon as is reasonably practicable" "does not deprive him of the power to make it".[19] Although the State party has asserted that the Minister was required to make the determination in the author's case "as soon as was reasonably practicable," it has not provided details of the inquiries it had to make during the relevant period, neither has it specified why the process took 14 months and why that was "as soon as was reasonably practicable". Consequently, the author's detention was not justified under article 9, paragraph 1, of the Covenant.

5.7 Further, the author clarifies that he relies upon article 14 of the Covenant to the extent that article 13 of the Covenant must be understood in the light of the guarantees in article 14. It is not asserted that article 14, paragraph 1, of the Covenant applies directly to his case. Rather, he submits that article 13 applies, as he should "be allowed to submit the reasons against his expulsion and have his case reviewed by and be represented for the purpose before" the competent authorities. This incorporates "notions of due process", which must be interpreted in the light of article 14 of the Covenant and general comment No. 32, paragraph 62. As the domestic law of Australia "entrusts a judicial body with the task of deciding about" extradition matters, "the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of

[16] See Australian jurisprudence in *McDade* v. *United Kingdom* [1999] FCA 1579.

[17] See Office of the United Nations High Commissioner for Refugees, "UNHCR Detention Guidelines", (Geneva, 2012). Guideline 4.1 reads that "detention is an exceptional measure and can only be justified for a legitimate purpose".

[18] See European Court of Human Rights case of *A.* v. *the United Kingdom*, application No. 3455/05, Grand Chamber judgment of 19 February 2009, para. 164.

[19] See *Snedden* v. *Minister for Justice of the Commonwealth* [2013] FCA 1202, [16], [20]-[21].

impartiality, fairness and equality of arms implicit in this guarantee are applicable".[20] The communication is thus admissible under articles 13 and 14 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that domestic remedies have not been exhausted, as the author did not make a bail application to the Full Federal Court when he appealed the Federal Court decision of 7 July 2004 that he was eligible for extradition. The Committee notes the State party's reference to the case law of the Australian High Court that the person seeking bail has to establish that "special circumstances exist" and the matters relied on need to be "extraordinary and not factors applicable to all persons facing extradition". It notes that the State party concedes that this jurisprudence sets a "relatively high threshold" to meet. It also notes the author's argumentation that the matters he could put forward as special circumstances, including his compliance with previous bail conditions, the length of detention and the absence of flight risk, do not amount to "special circumstances" according to the case law of the High Court. It also notes his argumentation that he would not have been able to demonstrate "strong prospects of success" of his bail application as required by the High Court's case law. The Committee recalls its jurisprudence that, for the purposes of the Optional Protocol, an author is not required to exhaust domestic remedies, if the jurisprudence of the highest domestic tribunal has decided the matter at issue, thereby eliminating any prospect of success of an appeal to the domestic courts.[21] The Committee therefore concludes that it is not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the author's submission that the State party violated its obligations under article 2, paragraph 2, of the Covenant, when read in conjunction with article 9, since it had failed to adopt such laws or other measures as may be necessary to give effect to the rights recognized in article 9 of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down a general obligation for States parties, and that they do not give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[22] It also considers that the provisions of article 2 could not be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause

[20] See general comment No. 32 (note 6 above), para. 62. See also *Everett* v. *Spain* (note 6 above), para. 6.4; and *Perterer* v. *Austria* (note 6 above), para. 9.2.

[21] See, for example, communication Nos. 1635/2007, *Tillman* v. *Australia*, views adopted on 18 March 2010, para. 6.3; 1533/2006, *Ondracka and Ondracka* v. *the Czech Republic*, views adopted on 31 October 2007, para. 6.3; 1095/2002, *Gomariz Valera* v. *Spain*, views adopted on 22 July 2005, para. 6.4, and 511/1992, *Länsman et al.* v. *Finland*, views adopted on 26 October 1993, para. 6.3.

[22] See, for example, *Polyakov* v. *Belarus*, communication No. 2030/2011, views adopted on 17 July 2014, para. 7.4.

of a distinct violation of the Covenant directly affecting the individual who claims to be a victim. The Committee notes, however, that the author has already alleged a violation of his rights under article 9 resulting from interpretation and application of the existing laws of the State party, and the Committee does not regard that an examination of whether the State party also violated its general obligations under article 2, paragraph 2, of the Covenant, when read in conjunction with article 9, would be distinct from the examination of a violation of the author's rights under article 9 of the Covenant. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

6.5 Recalling its earlier case law, the Committee considers that, although the Covenant does not require that extradition procedures be judicial in nature, extradition as such does not fall outside the protection of the Covenant. On the contrary, several provisions, including articles 6, 7, 9 and 13, are necessarily applicable in relation to extradition. Particularly, in cases where, as in the present one, the judiciary is involved in deciding about extradition, it must respect the principles of impartiality, fairness and equality, as enshrined in article 14, paragraph 1, and also reflected in article 13 of the Covenant. The Committee recalls nonetheless that, even when decided by a court, the consideration of an extradition request does not amount to the determination of a criminal charge in the meaning of article 14 of the Covenant.[23] While article 14, paragraph 1, does not as such give persons subject to extradition access to a court or tribunal,[24] nevertheless, whenever domestic law entrusts a judicial body with a judicial task, the first sentence of article 14, paragraph 1, guarantees in general terms the right to equality before courts and tribunals and thus the principles of impartiality, fairness and equality, as enshrined in that provision must be respected.[25]

6.6 As to the claim under articles 13 and 14, read separately and in conjunction with article 2 of the Covenant, that the author was not afforded an opportunity to submit and challenge evidence regarding his extradition, the Committee notes the State party's argumentation that the extradition proceedings were conducted in accordance with the law, namely, the Extradition Act, and that the author was extradited only after he had been found eligible for surrender by the domestic courts, whose conclusions were confirmed by the final determination of the Minister of Justice and Customs. It is undisputed by the author that the domestic authorities neither acted in bad faith nor abused power in reaching the decision to extradite him. The Committee further notes the State party's argumentation that the author was afforded an opportunity to submit and challenge evidence concerning his extradition and that the author, while disputing this argumentation, has not submitted any specific information to the contrary. Furthermore, it notes that the author used the opportunity, under domestic law, to have his extradition case reviewed on several occasions by the competent authorities, such as the Federal Court, the Full Federal Court and the Minister of Justice and Customs. The Committee considers, therefore, that the author has not substantiated, for purposes of admissibility, this part of his communication, which is accordingly inadmissible pursuant to article 2 of the Optional Protocol, irrespective of whether it is addressed under article 13 or 14, separately and read in conjunction with article 2, of the Covenant.[25]

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[23] See *Everett* v. *Spain* (note 6 above), para. 6.4.

[24] See general comment No. 32 (note 6 above), para. 17. See also *Zundel* v. *Canada* (note 11 above), para. 6.8, and communication No. 1359/2005, *Esposito* v. *Spain*, decision adopted on 20 March 2007, para. 7.6.

[25] See general comment No. 32 (note 6 above), para. 7. See also *Everett* v. *Spain* (note 6 above), para. 6.4.

6.7 The Committee notes the author's claim that his rights under articles 13 and 14 of the Covenant were violated because he was pressurized to enter a guilty plea in the United States, fearing that his lengthy time in detention in Australia might not count if he was unsuccessful at trial in the United States. The Committee considers, given the material before it, that this part of the communication is insufficiently substantiated for purposes of admissibility and it is therefore inadmissible under article 2 of the Optional Protocol.

6.8 Regarding the author's claim under article 9, paragraph 3, of the Covenant, the Committee considers it inadmissible *ratione materiae*, given that this provision of the Covenant does not apply in extradition proceedings.

6.9 The Committee considers that the author's remaining claims, in which he raises issues under article 9, in conjunction with article 2, paragraph 3 (a), of the Covenant, have been sufficiently substantiated. Accordingly, it declares this part of the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2. The Committee notes the author's claim that his detention was arbitrary, in terms of article 9, paragraph 1, of the Covenant, particularly between 10 July 2004, when he was placed in detention for the second time since the initiation of the extradition proceedings, and 22 December 2006, when the Minister of Justice and Customs made a final determination in his extradition case. It also notes the State party's argumentation that the author's detention was not arbitrary by reason that it was in compliance with the law and justified, for the purpose of extradition. In that regard, the Committee recalls its jurisprudence that, in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification.[26] In the present case, the author's uninterrupted detention continued for over two years and five months, during which time he pursued avenues for appeal against the finding of the Federal Court of 7 July 2004, that he was eligible for surrender from Australia to the Unites States. While the State party advances particular reasons to justify his detention, the Committee observes that it has failed to demonstrate that those reasons justify the author's continued detention in the light of the passage of time and intervening circumstances. In particular, the State party has not demonstrated that, in the light of the author's particular circumstances, there were not less invasive means of achieving the same ends, that is to say, compliance with the State party's extradition policies and international cooperation obligations, by, for example, the imposition of reporting obligations, sureties or other conditions which would take account of his individual circumstances. In particular, the State party has failed to show whether due regard was given to the author's arguments in support of his release, such as his compliance with previous bail conditions within the course of the same extradition proceedings, a low flight risk, the absence of a past criminal record or his health condition.

7.3 Furthermore, the Committee notes, and it remains unchallenged by the State party, that detention pending extradition is not limited in time under Australian law and that, as a general rule, under the case law of the High Court, in extradition cases, persons "are to be held in custody whether or not their detention is necessary". In this connection, the Committee takes note of the author's argument that there is no indication, either in the

[26] See, for example, *C. v. Australia* (note 2 above), para. 8.2.

domestic law or the case law of the High Court, as to the duration of the extradition determination by the Minister of Justice and Customs, which is expected to take place "as soon as reasonably practicable". While noting that such a determination took over 15 months in the instant case, that is, from 6 September 2005 to 22 December 2006, the Committee considers that the State party has failed to demonstrate how that period met the criteria of "reasonably practicable" and why the author's continued detention was necessary and justified during this particular period. In these circumstances, whatever the reasons for the original detention, the author's continuing detention pending extradition without adequate individual justification is, in the view of the Committee, arbitrary and constitutes a violation of article 9, paragraph 1, of the Covenant.

7.4 The Committee also notes the author's claim, under article 9, paragraph 4, of the Covenant, that there were no effective and available remedies for him to obtain a judicial review of his continuous detention, which had become arbitrary owing to its disproportionate length. It notes that the State party disagrees with the author's statement, arguing that such a review was available through a bail application. Referring to its considerations regarding the admissibility, as well as to Australian law and the case law of the High Court, the Committee observes that release on bail can be granted by a court if the person concerned establishes the existence of "special circumstances", which should be "extraordinary and not factors applicable to all persons facing extradition", and that the person demonstrates "strong prospects of success" of the bail application. It notes the author's explanation that the length of detention as such does not amount to "special circumstances" under the case law of the High Court and that a person must establish a change of circumstances in order to justify a new bail application if a previous bail application has been denied. The Committee further notes the State party's argumentation that, although a "relatively high" threshold was set for a successful bail application, there was no requirement under article 9, paragraph 4, of the Covenant for a court to be able to order a release on the basis of the duration of detention alone, provided that detention is justifiable under the domestic law. It also notes that it has not been disputed by the State party that persons facing extradition are generally held in custody, regardless of the necessity of such detention.

7.5 The Committee recalls that a judicial review of the lawfulness of detention under article 9, paragraph 4, is not limited to mere compliance of the detention with domestic law, but must include the possibility to order a release if the detention is incompatible with the requirements of the Covenant, in particular those of article 9, paragraph 1, of the Covenant.[27] What is decisive for the purposes of article 9, paragraph 4, is that such a review is, in its effects, real and not merely formal.[28] In the present case, the author was detained pending extradition for over two years, with neither any chance of obtaining substantive judicial review of the continued compatibility of his detention with the Covenant, nor of being released on this ground. In the circumstances, and in the light of its findings under article 9, paragraph 1, of the Covenant, the Committee considers that the author was effectively precluded, by virtue of the State party's law and practice, from taking effective proceedings before a court in order to obtain a review of the lawfulness of his continuing detention, as the courts had no power to review whether his detention continued to be lawful after a lapse of time and to order his release on this basis. It also finds that the State party has not demonstrated that the author had an effective remedy with regard to his claim under article 9, paragraph 4, of the Covenant. Therefore, in the view of the Committee,

[27] See, for example, *C.* v. *Australia* (note 2 above), para. 8.3; and communication No. 1014/2001, *Baban* v. *Australia*, views adopted on 6 August 2003, para. 7.2.

[28] See, for example, *A.* v. *Australia* (note 1 above), para. 9.5.

such an inability to challenge a detention that was or had become contrary to article 9, paragraph 1, constitutes a violation of article 9, paragraph 4, of the Covenant.[29]

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal a violation of the author's rights under article 9, paragraphs 1 and 4, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation, including compensation of the legal costs incurred by the author. The State party is also under the obligation to take steps to prevent similar violations in the future. In this connection, the State party should review its legislation and practice, in particular, the Extradition Act No. 4 of 1988, as it has been applied in the present case, with a view to ensuring that the rights under articles 9 and 2 of the Covenant can be fully enjoyed in the State party.

10. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. Pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy where it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present views. The State party is also requested to publish the present views and to have them widely disseminated in English in the State party.

[29] See, for example, *C. v. Australia* (note 2 above), para. 8.3.

Appendix I

[Original: Spanish]

Individual opinion of Committee members Víctor Rodríguez Rescia and Fabián Salvioli

1. We agree with the Committee's views in *Griffiths* v. *Australia* (communication No. 1973/2010). Nevertheless, we believe that the Committee should have indicated that the State had not fulfilled the general obligation set forth in article 2.2 of the Covenant; and that it had violated this provision, read in conjunction with article 9 of the Covenant. Paragraph 6.4 of the views shows that, while the Committee is moving towards the best practices of the international human rights bodies, its reasoning is still not clear; it fails to explain why it applies different standards to the separate paragraphs of article 2. By so doing, it precludes any possibility of finding a violation of article 2.2, read in conjunction with other provisions of the Covenant, even though, in dealing with individual communications, it never uses such reasoning to find violations of article 2.3, read in conjunction with other provisions of the Covenant, as it has done in hundreds of cases that can be seen from its established jurisprudence.

2. According to communication No. 1973/2010, the violation of which Mr. Griffiths has been the victim is rooted in the law of the State itself, namely, the Extradition Act No. 4 of 1988. As the Committee states in its views, "the Committee considers that the author was effectively precluded, by virtue of the State party's law and practice, from taking effective proceedings before a court in order to obtain a review of the lawfulness of his continuing detention, **as the courts had no power to review whether his detention continued to be lawful after a lapse of time and to order his release on this basis**" (para. 7.5, emphasis added).

3. Lastly, we find that the decision set out in the views (para. 9) that the State "should review its legislation and practice, in particular, the Extradition Act No. 4 of 1988" is too weak. In our opinion, having determined that the State has violated article 2.2 of the Covenant, read in conjunction with article 9, the Committee should have concluded that Australia must align its Extradition Act with its obligations under the Covenant, making the requisite legislative amendments to this end, and duly applying them in future. Only in that way will the guarantee of non-repetition, as a measure of appropriate redress, be effectively implemented.

Appendix II

[Original: English]

Individual opinion of Committee member Dheerujlall B. Seetulsingh (concurring)

1. Although I do concur with the majority's views as to the inordinate length of the author's detention pending extradition, I must draw attention to the fact that it may be going too far to state in paragraph 7.5 that "the author was effectively precluded, by virtue of the state party's law and practice, from taking effective proceedings before a court in order to obtain a review of the lawfulness of his detention". The author could still have attempted another bail application, invoking a change of circumstances, and should not have prejudged the outcome. The State party's observations on the issue in paragraphs 4.6 and 4.7 bear some weight, and the author's comments in rebuttal in paragraph 5.2 appear to be legal arguments raised ex post facto. The author, to some extent, has to bear responsibility for the length of his detention.

Appendix III

[Original: English]

Individual opinion of Committee member Yuval Shany (concurring)

1. I am in full agreement with the Committee's views. I wish to clarify, however, my position regarding one aspect of the views, discussed in paragraph 6.5., namely, the applicability of article 14 of the Covenant to extradition cases.

2. While I can accept the position that article 14 of the Covenant does not require judicial extradition proceedings in respect of lawful aliens, such as the present author, since their removal from their country of residence may be governed by article 13 of the Covenant, I do not accept that judicial proceedings are not required in cases involving the extradition of citizens, who are not protected by article 13. Since a decision to extradite a citizen from his own country would have dramatic implications on his or her ability to enjoy civil rights under the Covenant, including his or her private law rights, I am of the view that it should be covered by the term, "the determination [...] of his rights and obligations in a suit at law" in article 14, paragraph 1, of the Covenant, and would require the extraditing State to meet the safeguards enumerated in that paragraph The Committee reached, in effect, the same outcome by noting that "whenever domestic law entrusts a judicial body with a judicial task, the first sentence of article 14, paragraph 1, guarantees in general terms the right to equality before courts and tribunals and thus the principles of impartiality, fairness and equality, as enshrined in that provision must be respected" (paragraph 6.5). I would go, however, one step further and hold that States are always obligated to entrust the review of decisions to extradite their citizens to a judicial body. As far as I am aware, this is what the vast majority of States do anyway.

3. In addition, I am of the view that, to the extent that certain aspects of the extradition proceedings in the extraditing State are intimately linked to the criminal proceedings in the requesting State, some article 14 protections enumerated in paragraphs other than paragraph 1 and which are afforded to individuals facing a criminal charge in the requesting State would apply mutatis mutandis to these specific interlinked elements of the proceedings taking place in the extraditing States (regardless of whether the suspect is an alien or a citizen).[a] These may include protections relevant to investigative steps or acts of judicial officers that may have a direct adverse effect on the suspect's right to be presumed innocent in the eventual trial in the requesting State, protections relevant to unjustified delays in the extradition process that would harm the suspect's right to be tried without delay in the requesting State and protections relevant to forms of treatment in the extraditing State that would compromise the suspect's right not incriminate himself in the eventual trial in the requesting State. No such interlinked aspects, which may invite the introduction of protections that go beyond the article 13 protections already enjoyed by the author, manifested themselves in the present case and, as a result, the Committee had no need to resort to any of the additional article 14 protections discussed in the present paragraph.

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[a] See, for example, *Ismoilov* v. *Russia*, Judgment of the European Court of Human Rights of 24 April 2008, para. 164; *Ergashev* v. *Russia*, Judgment of the European Court of Human Rights of 20 December 2011, para. 169.